

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Arizona Public Service Company
El Paso Electric Company
Public Service Company of New Mexico
Tucson Electric Power Company

Docket No. RT02-1-003

WestConnect RTO, LLC

Docket No. EL02-9-001

ORDER GRANTING AND DENYING REQUESTS FOR
CLARIFICATION AND REHEARING

(Issued December 23, 2002)

1. In this order, we grant and deny requests for clarification and rehearing of our declaratory order issued on October 10, 2002.¹ In that order, we provided guidance on whether Arizona Public Service Company's, El Paso Electric Company's, Public Service Company of New Mexico's, and Tucson Electric Power Company's (collectively, Applicants) proposal to form WestConnect RTO, LLC (WestConnect) could satisfy the Commission's requirements for RTO status under Order No. 2000 and explained that further filings were required to move WestConnect from a conceptual proposal to a Commission-approved RTO.²

Discussion

¹See Arizona Public Service Company, et al., 101 FERC ¶ 61,033 (2002) (October 10 Order).

²See Regional Transmission Organizations, FERC Stats. & Regs. ¶ 31,089 at 30,993 (1999), 65 Fed. Reg. 810 (2000) (Order No. 2000), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 30,092, 65 Fed. Reg. 12,088 (2000), aff'd, Public Utility District No. 1 v. FERC, 272 F.3d 607 (D.C. Cir 2001).

I. Procedural Matters

2. Applicants filed an answer to the requests for rehearing. In addition, Power Up Corporation and Utah Associated Municipal Power Systems filed answers to Applicants' answer to the requests for rehearing. Rule 213 of our Rules of Practice and Procedure prohibits answers to requests for rehearing and answers to answers to requests for rehearing unless otherwise ordered by the decisional authority.³ We are not persuaded that permitting an answer to the requests for rehearing or answers to that answer will aid us in providing further guidance concerning Applicants' proposal.

II. Requests for Rehearing and Clarification**A. Standard Market Design****1. Request for Clarification**

3. Applicants state that they filed a detailed RTO proposal that included an Open Access Transmission Tariff (Tariff) and protocols governing virtually every aspect of WestConnect's operations. They note that the Commission, in the October 10 Order, found that Applicants' proposal satisfied, or with certain modifications would satisfy, the Commission's requirements for an RTO under Order No. 2000.⁴ Therefore, Applicants seek clarification that the Commission has, with the exception of areas where Applicants' proposal was made subject to change based on the final Standard Market Design rule, approved their entire proposal.

4. In addition, Applicants note that their reading of the October 10 Order reveals only three areas that were made subject to the final Standard Market Design rule. According to Applicants, those three areas are: "(1) whether the seven factor test or the integration standard will be used to determine which facilities will be eligible for credits; (2) resource adequacy; and (3) market monitoring."⁵ They request that the Commission clarify that the Commission has, with the exception of these three areas, declared that the other elements of their proposal will not be subject to change based on the final Standard Market Design rule.

³See 18 C.F.R. § 385.213(a)(2) (2002).

⁴See id. at P 2.

⁵See Applicants' Request for Rehearing at 5.

5. The New Mexico Attorney General (NM Attorney General) requests rehearing of “those portions of the Commission’s Order which condition approval of the WestConnect RTO on compliance with the Standard Market Design NOPR,⁶ as indicated at several places in the Order.”⁷ NM Attorney General states that requiring Applicants' proposal to conform to the requirements of Standard Market Design NOPR is neither legal nor logical, because: (1) there is no final rule; and (2) Applicants' filing for a declaratory order was made almost a year before the Standard Market Design NOPR was issued. The NM Attorney General also seeks clarification that a further filing will be made by Applicants and that intervenors will then have the opportunity to comment on these further filings.

2. Commission's Response

6. We recognize that substantial time and effort have been put into developing solutions to market design issues confronting the Southwest in the context of complying with Order No. 2000. The Commission has evaluated aspects of regional solutions against the broad policy goals and objectives under consideration generically in the Standard Market Design NOPR. In approving various aspects of Applicants' proposal, we have tried to provide substantial assurance that the Commission has no intention of "undoing" solutions developed by the RTO in order to "replace" them with an alternative solution that may ultimately be developed in the generic rulemaking. The October 10 Order stated that the Commission viewed the filing as, "both informing and being informed by the proposed [Standard Market Design] proposed rule."⁸ Specifically, the Commission stated:

[W]e take this opportunity to clarify that it is not this Commission's intent to overturn, in the final Standard Market Design rule, decisions that are made in this docket. In other words, unless the Commission has specifically indicated in this order that an element of the RTO proposal is inconsistent with the Standard Market Design proposal or needs further work in light of the Standard Market Design proposal, we do not intend, in the final

⁶See Remedying Undue Discrimination Through Open Access Transmission and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 Fed. Reg. 55, 452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002) (Standard Market Design NOPR).

⁷NM Attorney General’s Request for Rehearing at 4.

⁸October 10 Order at P 4.

Standard Market Design rule, to revisit prior approvals or acceptances of RTO provisions because of possible inconsistencies with the details of the final rule. This Commission intends to take all appropriate steps at the final rule state of the Standard Market Design rulemaking to ensure that, to the extent we have already approved or conditionally approved RTO elements, these approvals would remain intact.^[9]

7. Accordingly it is not our intent to overturn, in the final Standard Market Design rule, prior decisions that are made in this docket. Our intent in making this statement was to foster certainty for RTO sponsors in considering future business decisions.

8. We remain convinced that this approach is practical, builds on the substantial work that parties have put into developing WestConnect, and should achieve the same efficient, competitive, and non-discriminatory market outcomes we envision under Standard Market Design NOPR, while at the same time respecting important regional differences.

9. In adopting this approach, however, the Commission recognized that there was the potential for different RTOs within the Western Interconnection to adopt market design elements that might create seams or otherwise interfere with efficient inter-regional coordination. As we stated in RTO West:

We are encouraged by the parties efforts to address seams issues by creating the Western Market Vision and assigning functions to the Steering Group to implement the Western Market Vision and its coordinated efforts with [the Western Market Interface Committee]. We approve Applicants' proposal for the consensus-building forum of the Steering Group and direct Applicants to work with WestConnect and California ISO to formalize the Steering Group as the seams resolution group for the RTOs in the Western Interconnection.^[10]

10. Accordingly, while we have approved much of the conceptual framework for the creation of WestConnect and have encouraged WestConnect to continue working to develop appropriate solutions to the many outstanding issues that remain, it is still necessary to address any seams issues that may be created where different solutions are proposed by different RTOs in the Western Interconnection. In an October 25 Notice, the Commission emphasized the need for state participation to provide policy guidance to the

⁹Id.

¹⁰See, e.g., Avista Corporation, et al., 100 FERC ¶ 61,274 at 62,088 (2002) (RTO West).

seams resolution process and further requested that the Seams Steering Group of the Western Interconnection (SSG-WI) submit to the Commission by mid-January 2003:

. . . a list of recommended market design elements appropriate for the western interconnect . . . which elements must be designed compatibly to avoid seams, and a plan and timeline for resolution of these issues that is coordinated with RTO development efforts. This plan would include specific tasks for each of the current SSG-WI working groups and any other working groups that may be necessary.^[11]

11. Since the issuance of that notice, SSG-WI has made rapid progress in developing an open process for cooperation among and between the three developing RTOs, has signed a Memorandum of Understanding, and has posted on its website (www.ssg-wi.org) a preliminary draft of major seams issues that need to be addressed across the broader region for compatibility. SSG-WI has working groups on market monitoring, common systems interface coordination, transmission planning and expansion, congestion management, and price reciprocity (addressing export fees between RTOs). We are encouraged by the efforts being made by RTO West, WestConnect, and the California ISO under the SSG-WI process, and we appreciate their recognition that these issues deserve to be examined and ultimately resolved on a west-wide basis. We take this opportunity to reiterate the importance of this process and that our approval of any individual RTO market design solution is based on our expectation that the parties will continue to identify and work towards a successful resolution of any resulting seams issues.

12. In this order, we also clarify RTO elements that have been approved by the Commission.¹² As a result, we will not revisit these prior approvals upon issuance of the final Standard Market Design rule, unless we explicitly specified in the October 10 Order that an aspect of Applicants' proposal was either inconsistent with or needed further work in light of the Standard Market Design NOPR.¹³ These elements include:

- with respect to governance (subject to certain modifications) the ownership structure, the board and advisory committee structures, and the board selection process;

¹¹See Notice Announcing Process for Western Interconnection Market Design and Postponing Technical Conference, 67 Fed. Reg. 67,157 (2002) (October 25 Notice).

¹²See October 10 Order at P 4.

¹³See *id.*; see *infra* P 15.

- with respect to transmission pricing, the use of a license plate pricing approach for a transitional period, the use of an export fee as a transitional pricing mechanism, the use of a grid charge to recover WestConnect's costs, and the use of a transmission adjustment component to mitigate cost shifts for the Western Area Power Administration;
- with respect to transmission service, the use of voluntary contract conversion;
- with respect congestion management, the use of a physical rights model as a Day One approach;
- with respect to market monitoring, the modified market monitoring proposal as an interim measure if a west-wide market monitor is not in place upon start-up of WestConnect; and
- the modified planning and expansion proposal, subject to further conditions.

13. All of these areas are elements of market design that have been identified in the SSG-WI process as elements that must be examined to determine if the differences create seams problems. As such, it is possible that the SSG-WI process may identify seams that need to be addressed. If so, we will consider what steps are necessary to rationalize those seams, taking into consideration any recommendations developed by SSG-WI. This is consistent with our earlier orders in WestConnect and RTO West where we required applicants to identify and resolve seams issues through the SSG-WI process. Finally, we note that our prior order did not address other elements of market design that are currently being considered in the Standard Market Design NOPR and/or through the SSG-WI process. These include resource adequacy, market power mitigation measures, outage coordination, and limited liability. We expect that these issues will be addressed through the SSG-WI process.

14. In addition, we clarify that any issue not specifically addressed in our prior orders or that is subject to further development by Applicants may be subject to review for consistency with our findings in the final Standard Market Design rule.

15. Based on the aforementioned, we clarify that in the October 10 Order, we only determined that Applicants' proposal will satisfy the requirements of Order No. 2000 with some modification and further development of certain details. We did not approve Applicants' proposal in its entirety. Accordingly, we grant NM Attorney General's request for clarification that further filings will be required from Applicants before the Commission issues a final determination on whether it approves WestConnect as an RTO. At that time intervenors will have the opportunity to comment. In addition, the October 10 Order "provide[d] guidance in areas which we [did] not find consistent with the basic

principles of the Standard Market Design NOPR.”¹⁴ In other words, we “flagged” various elements of the proposal that were inconsistent with the general framework of the Standard Market Design NOPR and therefore more likely to be inconsistent with the final rule. The October 10 Order explained, as discussed above, that only under certain circumstances would elements of Applicants’ proposal be revisited after the final rule is issued. As a result, we have not conditioned approval of any elements of Applicants’ proposal on their compliance with the Standard Market Design NOPR. Accordingly, we deny NM Attorney General’s request for rehearing of this issue.

16. In addition, we grant Applicants’ request for clarification that there are only three areas in the October 10 Order where we stated that an aspect of Applicants’ proposal that we approved or conditionally approved would be subject to the final Standard Market Design rule. The three areas of Applicants’ proposal that we approved or conditionally approved and also made subject to the final Standard Market Design rule are the following: First, in our directive to Applicants that they must either provide transmission credits or the methodology by which the credits will be determined, we noted that the Standard Market Design NOPR proposes that a seven factor test be used to determine what facilities will be eligible for credits.¹⁵ Second, in our discussion of Applicants’ proposal for local generation resource service, we explained that the Standard Market Design NOPR proposes to impose a resource adequacy requirement on load serving entities.¹⁶ Finally, in our consideration of Applicants’ market monitor proposal, which provides WestConnect’s board with oversight responsibilities over the market monitor, we noted that the Standard Market Design NOPR relies heavily on a market monitor that is independent from the independent transmission provider market monitoring.¹⁷

B. For-Profit Entity and the Standard Market Design NOPR

1. Request for Clarification

17. Utah Associated Municipal Power Systems (UAMPS) requests that the Commission clarify that our October 10 Order is not prejudging the proper role of an Independent Transmission Company (ITC) under the final Standard Market Design rule by approving Applicants’ proposal for a for-profit entity and “immunizing” Applicants’

¹⁴October 10 Order at P 4 (emphasis added).

¹⁵See October 10 Order at P 127 & nn.78-79.

¹⁶See id. at P 176 n.104.

¹⁷See id. at P 189 & n.115 and P 191 & n.122 & 126.

proposal from modification in light of the Commission's conclusion regarding the proper role of an ITC in the final Standard Market Design rule.

2. Commission's Response

18. In the October 10 Order, we stated that:

Order No. 2000 states that the Commission 'will not limit the flexibility of proposed structures or forms of RTOs' and concludes that the Commission is prepared to accept a transco, ISO, hybrid, or other form of an RTO as long as it meets our minimum characteristics, functions, and other requirements. Accordingly, we accept the for-profit aspect of Applicants' proposal.¹⁸

In addition, as we explained in the October 10 Order, "to the extent we have already approved or conditionally approved RTO elements, these approvals [will] remain intact."¹⁹ Accordingly, because we approved WestConnect's for-profit status without identifying it as being inconsistent with the Standard Market Design NOPR, we deny UAMPS' request that the Commission clarify that Applicants' for-profit proposal may need to be modified in light of the Commission's conclusion regarding the proper role of an ITC in the final Standard Market Design rule. However, we note that our approval of WestConnect's for-profit structure will not predetermine our decision in the final Standard Market Design rule regarding whether a for-profit ITC should be permitted to perform all the functions of an independent transmission provider.²⁰

C. Rights of Class C Ownership Interests

1. Request for Rehearing

¹⁸October 10 Order at P 28 & n.24 (citing Order No. 2000 at 31,036).

¹⁹See *id.* P 4.

²⁰To the extent that we have not addressed aspects of Applicants' for-profit proposal or Applicants propose particular functions for WestConnect to perform, such elements will be subject to review for consistency with Order No. 2000 and other related decisions regarding functions that may be performed by an ITC.

19. Applicants seek rehearing of the Commission's finding that allowing Class C interests (i.e., market participants)²¹ to modify the WestConnect Limited Liability Company Agreement (LLC Agreement) in order to increase their voting rights is contrary to the independence requirement of Order No. 2000. Applicants state that the rights of Class C interests are consistent with current Commission policy (i.e., they will have the right to vote solely on a limited class of fundamental business decisions that are integral to the preservation of their financial interests). Section 4.1(d)(iv) of the LLC Agreement was included to provide that Class C interests be made equal with the rights of the other classes under the LLC Agreement in the event of a change in Commission policy that would permit such equalization. In addition, Applicants maintain that they should neither have to obtain the Board of Director's (Board) approval to take advantage of any new rights for Class C interests that the Commission permits in the future nor should the Board be in the position of making judgments about the relative rights of different classes of interests in a for-profit company.

2. Commission's Response

20. We agree with Applicants that Class C interests should be able to change their voting rights if there is a change in Commission policy regarding the rights of Class C interests. In addition, we agree with Applicants that the Board should not be in the position of making judgments about the relative rights of different classes of interests. Accordingly, we grant their request for rehearing that if such a change in Commission policy takes place, Applicants do not have to seek the Board's approval. However, as Applicants acknowledge, any such change in voting rights of Class C interests would have to be implemented through a section 205 filing.

D. Classes Required to Be Included in the Stakeholders Advisory Committee

1. Request for Rehearing

21. In the October 10 Order, the Commission directed Applicants to add two additional stakeholder classes (public interest organizations and alternative energy providers) to the eight classes that they proposed for the Stakeholder Advisory Committee (SAC). Applicants argue that this directive does not recognize that the eight selected

²¹Market participants, such as transmission-owning members, generators, and power marketers, will be assigned Class C interests and thus have rights to profit and loss distributions, but will have no voting rights regarding the day-to-day management of WestConnect. See October 10 Order at P 16.

classes reflect a compromise among all of the WestConnect stakeholders that allows these two stakeholder classes to participate in the governance of WestConnect through one of the eight classes proposed by Applicants. According to Applicants, public interest organizations are entitled to participate as members of the Small Retail Customers class and alternative energy providers are entitled to participate in the SAC as members of the Generators class.

2. Commission's Response

22. Applicants have not convinced us that their proposal for stakeholder classes will provide these two stakeholder classes with representation on the SAC. While these two interests may be able to participate in other stakeholder classes, we are not persuaded that the interests are sufficiently similar to provide adequate representation for them. Accordingly, as we stated in the October 10 Order, Applicants must revise their class designations for the SAC to include the following two additional stakeholder classes: Public Interest Organizations (e.g., consumer advocates, environmental groups, and citizen participation) and Alternative Energy Providers (e.g., distributed generation, demand response technologies, and renewable energy).

E. Quorum Requirements of the Stakeholder Advisory Committee

1. Request for Rehearing

23. The Commission directed in the October 10 Order that Applicants modify Section 6.7 of the LLC Agreement to eliminate restrictions on the ability of the SAC to raise issues before the Board. Applicants interpret this as requiring the elimination of the quorum requirement from that section of the LLC Agreement.²² According to Applicants, the October 10 Order mistakenly construed Section 6.7(b) to mean that stakeholders are limited in their ability to approach the Board directly with issues. A quorum requirement merely assures that before the SAC, as a committee, makes a formal recommendation to the Board on a proposal to change the Tariff, there is sufficient SAC membership present to vote on the proposal. Furthermore, Applicants state that proposals (including proposals

²²The October 10 Order stated that: "We expect the Board, when seated, to consider all issues raised by the stakeholders. Such an open dialogue is key to the formation and the development of WestConnect. Therefore, the WestConnect LLC Agreement must not limit the ability of stakeholders, absent a quorum of the [SAC], to raise issues before the Board. We direct Applicants to modify Section 6.7 of the WestConnect LLC Agreement accordingly." October 10 Order at P 57.

to change the Tariff) supported by smaller groups of individuals within the SAC can always be made to the Board by those individuals but would not represent the position of the SAC.

2. Commission's Response

24. In the October 10 Order, we did not require that the quorum requirement be removed from the LLC Agreement; rather, we stated that it must not limit the role of the SAC by precluding individual stakeholders and stakeholder groups from bringing "minority statements" to the Board without a super-majority vote. Because Applicants have assured us that nothing in the LLC Agreement limits a stakeholder's ability to bring issues, including proposed Tariff changes, directly to the attention of the Board, we grant rehearing.

F. Membership Fees

1. Request for Rehearing

25. Arizonans for Electric Choice and Competition (Arizonans for Competition)²³ states that there is no cost justification for the proposed fees for being a stakeholder in

²³Arizonans for Competition filed a timely Motion to Intervene and Protest in Docket No. EL02-9-000. However, the Commission inadvertently failed to consider Arizonans for Competition's intervention and the issues raised in its protest in the October 10 Order. Accordingly, the Commission, as requested by Arizonans for Competition in its request for rehearing, is treating Arizonans for Competition's filing in the EL02-9-000 proceeding as a request for rehearing of the October 10 Order.

Westconnect.²⁴ According to Arizonans for Competition, the proposed fees are excessive and pose an unjustifiable barrier to participation by interested parties, particularly retail customers. Accordingly, Arizonans for Competition requests that the Commission direct Applicants to reduce both the initial and annual fee to \$250 per year, which was the membership fee that DesertSTAR required.²⁵

2. Commission's Response

26. Arizonans for Competition has not provided any evidence that the \$10,000 application fee and the \$5,000 annual membership fees are excessive or that these fees will preclude market participants from joining WestConnect. The Commission has approved fees for membership that have been either higher or the same as those proposed by Applicants.²⁶ However, to ensure that all potential members may join, the Board must provide fee waivers or reductions on a non-discriminatory case-by-case basis for legitimate public interest groups upon the written request of such entities.²⁷ Moreover, there is nothing preventing groups from establishing an organization (or designating an agent) that could pay the application fee and associated annual dues and represent their collective interests in WestConnect.²⁸

G. Market Participants

²⁴Section 6.7 of the LLC Agreement states that stakeholders that seek to designate a representative to the Stakeholder Advisory Committee must pay an initial fee of \$10,000 to WestConnect and make an annual payment of \$5,000 for each year thereafter.

²⁵DesertSTAR was the earlier Southwestern RTO project from which WestConnect evolved.

²⁶See, e.g., Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 at 62,149-50 (1998) (approving a \$15,000 application fee); Mid-Continent Area Power Pool, 76 FERC ¶ 61,261 at 62,343 (1996) (approving an initial membership fee of \$10,000).

²⁷Although in the past we have not required a membership fee reduction for public interest groups, see, e.g., RTO West, 95 FERC ¶ 61,114 at 61,331 (2001) and PJM Interconnection, L.L.C., et al., 96 FERC ¶ 61,061 at 61,229 n.15 (2001), upon further consideration we believe that the fee should be reduced or waived for these groups.

²⁸See, e.g., Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 at 62,265 (1997).

1. Request for Clarification

27. In the October 10 Order, the Commission stated that Applicants' proposal provides that "[m]arket participants, such as transmission-owning members, generators and power marketers that make capital contributions to WestConnect . . . will be assigned Class C interests that . . . have no voting rights regarding the day-to-day management of WestConnect."²⁹ In addition, we stated that "because Class A interests are non-market participants, we find that allowing them to choose Board members is consistent with Order 2000."³⁰

28. According to UAMPS, Applicants' proposal appears "to contemplate that individual transmission owners within the region would be non-market participants that can directly control WestConnect's operations and even elect their own individual representatives to the Board of Directors."³¹ UAMPS requests that the Commission clarify that an entity that owns a portion of the transmission assets within WestConnect's region or an adjacent region is a market participant from which WestConnect must remain independent or, alternatively, that the Commission will review in advance the issuance of a voting interest to any WestConnect member. UAMPS states that it appears that Applicants intend to treat transmission owners as non-market participants entitled to hold Class A³² voting interests in WestConnect.

2. Commission's Response

29. As the October 10 Order notes, Applicants define "market participant" consistent with the definition in Order No. 2000.³³ In Order No. 2000, the Commission included

²⁹October 10 Order at P 22.

³⁰Id. at P 36.

³¹UAMPS' Request for Rehearing at 2.

³²Class A interests will have the right to profit and loss distributions, active voting rights in the management of WestConnect, and the ability to elect their own members of the Board if they have sufficient ownership stake. See October 10 Order at P 15.

³³See October 10 Order at P 15 n.13; see also WestConnect Tariff, Attachment 1, at 27.

providers of transmission service to an RTO as market participants.³⁴ Furthermore, the LLC Agreement provides that only non-market participants will be assigned Class A ownership interests³⁵ and that market participants (such as transmission-owning members, generators, and power marketers that make capital contributions to WestConnect) will be assigned Class C interests that have rights to profit and loss distributions but have no voting rights regarding the day-to-day management of WestConnect.³⁶ Thus, Applicants' definition is sufficient to ensure that WestConnect is independent from any entity whose economic or commercial interests could be significantly affected by the RTO's actions or decisions, including entities such as individual transmission owners.³⁷ It is likely that transmission owners will also own generation (or have contract rights to generation). As such, these entities would be considered market participants. Therefore, we find UAMPS' clarification request unnecessary, and we deny it.

H. Relationship Between WestConnect's TCA and Tariff

1. Request for Clarification or Rehearing

30. According to Duke Energy North America, LLC (Duke), section 4.6 of WestConnect's Transmission Control Agreement (TCA) provides that in the event of a conflict between section 6.2 of the TCA (which incorporates by reference most sections of the TCA that grant power to the PTOs) and any other WestConnect document, the TCA prevails. Duke states that this provision improperly provides transmission owners with undue authority over RTO operations and should be eliminated. Duke requests that the Commission clarify that the TCA does not automatically take precedence when conflicts exist between the TCA and the Tariff. Alternatively, the Commission should

³⁴See id. ("Market participant means: (i) Any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides transmission or ancillary services to the Regional Transmission Organization, unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions; and (ii) Any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions.")

³⁵See October 10 Order at P 15 n.13.

³⁶See id. at P 16.

³⁷See Order No. 2000 at 31,061 ("the definition [of a market participant] focuses on those entities whose economic and commercial interests can be significantly affected by the RTO's behavior").

reject section 4.6 of the TCA on rehearing. Duke maintains that WestConnect TCA contains language that is even broader than a similar provision in the RTO West Transmission Operating Agreement (TOA), which the Commission rejected.³⁸

2. Commission's Response

31. The blanket nature of section 4.6 of the TCA, which provides that the terms of the TCA will always govern in the event of a conflict between the TCA and the terms of other WestConnect Grid Agreements, is not acceptable because it does not adequately reflect the need to provide for a non-discriminatory tariff to govern transmission access in the region and an independent entity to administer the tariff. However, we recognize that many TCA provisions may reflect longstanding negotiated contractual arrangements or treaty or statutory obligations of the parties. We also recognize that the willingness or ability of some entities to participate in the RTO may hinge on particular agreed upon provisions in the TCA. Accordingly, we must balance the need to ensure independence of the RTO and operation of an efficient non-discriminatory transmission grid with the legal obligations and interests of the parties joining the RTO. To appropriately undertake this balancing, we direct Applicants to provide a list of the specific TCA provisions that are essential to meeting members' legal obligations or affect their ability to participate in the RTO (and also a list of the Tariff or rate schedule provisions with which the TCA provisions may conflict) and an explanation of why these provisions are essential. Once we have this list of TCA provisions and the WestConnect Grid Agreements, we will allow all interested parties an opportunity to comment on the provisions and we will make a decision at that time.

I. Independent Market Monitor

1. Request for Clarification or Rehearing

32. Duke seeks rehearing of the Commission's determination that the WestConnect Market Monitoring Unit is an appropriate interim measure. It requests that the Commission direct Applicants to immediately develop a Market Monitoring Unit that does not operate as a division of WestConnect and that is independent from all market

³⁸See RTO West at P 47 ("We reject Section 25.18 of the TOA, which allows the TOA to automatically govern when conflict exists between the TOA and the RTO West Tariff."). We note that in an order on rehearing of that RTO West order, which is being issued concurrently with this order, the Commission is permitting RTO West applicants the opportunity to provide a list of the TOA sections that they believe are necessary to maintain existing authorities of RTO participants.

participants. Alternatively, Duke seeks clarification that the October 10 Order requires a “date certain” for implementation of the Market Monitoring Entity for the entire Western Interconnection (i.e., the date it would replace the WestConnect Market Monitoring unit). Furthermore, Duke requests clarification that the Commission will require Applicants to submit reports to the Commission on the progress of such efforts.

2. Commission’s Response

33. In Order No. 2000, the Commission did not prescribe a particular market monitoring plan or the specific elements of such a plan. As we stated in the October 10 Order, Order No. 2000 provided for a flexible approach and noted that different market monitoring plans may be appropriate for different RTOs.³⁹ We deny Duke’s request that we reverse that policy here. Furthermore, we deny Duke’s request that we adopt a date by which a single market monitoring entity for the Western Interconnection must be in place. We note that SSG-WI has undertaken, with participation of interested stakeholders, an effort to develop a west-wide market monitoring plan. To the extent that WestConnect becomes operational prior to Commission consideration of a west-wide market monitoring proposal, it is appropriate for WestConnect to have an interim stand-alone program in place.

J. RTO Cost-Benefit Analysis

1. Request for Rehearing

34. NM Attorney General believes there has not been an adequate demonstration by either Applicants or the Commission that RTOs in general, or WestConnect in particular, “should be approved as a superior alternative to cost-of-service based rate regulation of transmission service and generation ancillary services.”⁴⁰ NM Attorney General states that such a cost-benefit study should be done before WestConnect is approved.

2. Commission’s Response

35. Order No. 2000 stated that we expect the benefits of RTO formation overall to outweigh the costs. It did not require cost-benefit analyses of particular RTO filings. Nevertheless, we are reviewing existing cost-benefit studies of RTOs and plan to review others that are currently being conducted when they become available. We will consider

³⁹See October 10 Order at P 191 & n.120 (citing Order No. 2000 at 31,155-56).

⁴⁰NM Attorney General’s Request for Clarification and Rehearing at 3.

such studies, like other analyses and arguments submitted during the course of individual proceedings, before issuing a final order on an RTO proposal. However, because the October 10 Order was a preliminary order on Applicants' proposal, it would be premature to address such an analysis now..

36. We observe that RTOs are not intended as an alternative to cost-based transmission service or generation ancillary services. Transmission service will continue to be regulated as a monopoly provider and generation ancillary services will not cease to be cost-based due to RTO formation. Market-based rates for generation ancillary services will be granted only where generation market power does not exist or has been sufficiently mitigated to ensure just and reasonable rates. Accordingly, we deny NM Attorney General's request for rehearing.

K. Market-Based Rates

1. Request for Rehearing

37. In the October 10 Order, the Commission stated that: "we will approve Applicants' congestion management proposal as a 'Day One' mechanism and . . . direct Applicants to engage in further discussions to develop a congestion management program that reflects market-driven solutions to clear congestion."⁴¹ In addition, we found that "the development of a competitive ancillary services market and access to a real-time balancing energy mechanism will promote efficient pricing. Accordingly, we will not require that the ancillary services proposal be modified to establish cost-based rates for the energy balancing and other ancillary services charges."⁴²

38. NM Attorney General asks that the Commission direct that "market-based pricing mechanisms for transmission congestion management and ancillary services" be cost-based rather than market-based.⁴³ In addition, NM Attorney General asserts that market-based rates for these services are not authorized by the FPA, because they allow rates to fluctuate without notice.

2. Commission's Response

⁴¹October 10 Order at P 160.

⁴²Id. at P 172.

⁴³NM Attorney General's request for Rehearing at 7-8.

39. We deny NM Attorney General's request for rehearing regarding this matter. NM Attorney General's arguments are similar to those that have been rejected in prior Commission orders.⁴⁴ The FPA does not dictate the ratemaking methodology to be followed or the elements that must be included in a lawful tariff.⁴⁵ As we discussed in State of California: "Market-based rates are permitted by the FPA. Use of market-based rates has been approved as satisfying the just and reasonable standard in certain circumstances."⁴⁶ The prerequisite for approval of market-based rates is a finding that the seller lacks or has mitigated its market power in the relevant market.⁴⁷ So long as a seller lacks market power and therefore buyers have alternatives, market-based rates will satisfy the just and reasonable standard.⁴⁸ Accordingly, as noted in the October 10 Order, when Applicants make their 205 filing, we will apply the appropriate standards to review any market-based rate proposals.⁴⁹

L. Transmission Credits

1. Request for Rehearing and Clarification

40. The Commission stated in the October 10 Order that: "In order to facilitate one-stop shopping, as envisioned by Order No. 2000, WestConnect, as the transmission provider, must either provide the transmission credits or the methodology by which the

⁴⁴See, e.g., State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corp., et al., 99 FERC ¶ 61,247 at 62,062 (2002) (State of California); San Diego Gas & Electric Co., et al., 96 FERC ¶ 61,120 at 61,505-06 (2001).

⁴⁵See State of California, 99 FERC at 62,062.

⁴⁶See id. (citing Louisiana Energy and Power Authority v. FERC, 141 F.3d 364, 365 (D.C. Cir. 1998) (LEPA); Elizabethtown Gas Co. v. FERC, 10 F.3d 866, 870 (D.C. Cir. 1993) (Elizabethtown)).

⁴⁷See, e.g., LEPA, 141 F.3d at 365; Grand Council of the Crees v. FERC, 198 F.3d 950, 953 (D.C. Cir. 2000).

⁴⁸See, e.g., Elizabethtown, 10 F.3d at 871 ("Such market discipline provides strong reason to believe that [the pipeline] will be able to charge only a price that is 'just and reasonable' within the meaning of §4 of the NGA.").

⁴⁹See October 10 Order at P 175 & n.102.

credits will be determined and allocated for non-RTO facilities used by WestConnect in providing services. We require[d] Applicants to modify their proposal to reflect this."⁵⁰

41. Applicants request that the Commission approve their proposal for providing credits for integrated customer-owned facilities. Specifically, Applicants contend that the October 10 Order erred because "it rejects the previously controlling integration standard for credits for customer-owned facilities and adopts the previously rejected interconnection standard requiring them to modify the WestConnect Tariff to incorporate a standard for determining transmission credits for customer-owned facilities based upon an interconnection test rather than an integrated test."⁵¹

42. Duke requests clarification that the Commission did not intend by its silence in the October 10 Order to preclude giving transmission rights auction revenues or transmission credits to parties that fund transmission upgrades. According to Duke, Appendix P does not include a mechanism that provides for transmission rights auction revenues or credits for the construction of transmission upgrades. Therefore, Duke argues that Applicants should be required to provide a crediting mechanism or congestion rights allocation to third parties who fund construction of transmission system upgrades in the WestConnect planning and expansion proposal.

2. Commission's Response

43. Applicants' request for rehearing is denied. The October 10 Order found that WestConnect, as the transmission provider (not individual PTOs), must provide transmission credits for customer-owned facilities used by WestConnect in providing transmission service.⁵² We did not prescribe a particular standard for determining transmission credits; the order did not mandate the use of an interconnection test rather than an integration test for determining transmission credit eligibility.⁵³

44. We deny Duke's request that we clarify that Applicants must provide a crediting mechanism to parties who fund construction of transmission system upgrades in the WestConnect planning and expansion proposal. According to Section P.9 of Appendix P, transmission system upgrades must become part of the WestConnect grid. The developer

⁵⁰October 10 Order at P 128.

⁵¹See Applicants' Request for Rehearing at 19.

⁵²See id. at P 128.

⁵³In the October 10 Order, we made this element of Applicants' proposal subject to the final Standard Market Design rule. See supra note 18 and accompanying text.

of the upgrades must execute with WestConnect either a Transmission Control Agreement (which provides for cost recovery through a zonal rate) or a contract (which provides for cost recovery through a grid management charge) that grants WestConnect operational authority over the project. Thus, transmission credits are not necessary as a cost recovery mechanism for such facilities, because the cost of those facilities will be recovered either through a zonal rate or grid management charge.

45. We agree with Duke that Applicants must provide a transmission rights allocation mechanism for upgrades. Applicants' proposal already provides for transmission rights allocation mechanism for upgrades for new transmission facilities.⁵⁴ However, the planning and expansion proposal does not specify whether transmission rights will be allocated when a transmission upgrade increases available transmission capability and, as a result, allows for additional transmission rights to be auctioned.⁵⁵ Upgrades to existing facilities on WestConnect's transmission system should also qualify for transmission rights auction revenues when the upgrades increases available transmission capability.

M. Congestion Management

1. Requests for Rehearing and Clarification

46. Arizonans for Competition argues on rehearing that Applicants' congestion management proposal gives PTOs a priority in obtaining congestion rights. Arizonans for Competition contends that such a priority is discriminatory and will stifle retail access because it will make it expensive for retail load to change providers. Duke requests that the Commission state that Applicants may not use an open-ended implementation process for developing a market-driven congestion solution. In addition, the Commission should require Applicants to file a schedule and periodic progress reports on the development of a market-based congestion management mechanism.

2. Commission's Response

⁵⁴Section P.7.1(d) of the Tariff specifies that transmission rights auction revenues will be provided for construction of new transmission facilities.

⁵⁵Appendix A (Congestion Management) of the Tariff states that auction revenues will be credited (on a per MW basis for each congested interface) to scheduling coordinators who represent native load or existing contracts rights holders. Any remaining auction revenues will be allocated in proportion to each PTO's MW amount to the PTOs owning or holding entitlements on the congested interfaces. See Section A.1 of Appendix A of the Tariff.

47. As an initial matter, we note that requirements loads and existing contracts will be allocated transmission capacity prior to the FTR auction proposed by Applicants. Consequently, it is the residual transmission capacity, if any, that will be auctioned as FTRs in this process. It is not our intention to deprive customers of their existing transmission rights and require them to repurchase such rights in the auction process.

48. We agree with Arizonans for Competition that Applicants' proposal, which gives PTOs a priority in obtaining congestion rights, is discriminatory and conflicts with the principles of Order No. 2000.⁵⁶ Applicants claim that PTOs should have priority rights for access to congested facilities in order to prevent their retail customers from being injured economically by the formation of WestConnect. However, they offer no further justification for this preferential treatment for PTOs; in particular, they have not demonstrated with any specificity as to what type of harm their retail customers will experience if such a bid preference is not given to PTOs. Accordingly, given the competitive advantage that this preference would give to PTOs providing bundled service and the possible barriers it will create for the development of retail access in that region, we require Applicants to strike from Appendix A of the Tariff language that allows PTOs to have priority over other bidders for the receipt of FTR allocations.

49. We will grant in part Duke's request for clarification, because Order No. 2000 requires that RTOs institute a market-based congestion management mechanism within one year after the commencement of operations (i.e., WestConnect has up to one year after start-up to implement a congestion mechanism using market-driven solutions). However, we will not require Applicants to make periodic updates, as Duke requests. The Commission has requested that the SSG-WI develop a list of recommended market design elements appropriate for the Western Interconnection, which will include transmission rights and congestion management mechanisms.⁵⁷ The Commission asked for a plan and time line for resolution of those issues by mid-January of 2003. Accordingly, we see no need to impose an additional reporting process by WestConnect at this time.

50. Upon further examination of Applicants' congestion management proposal, we have concerns regarding their auction of firm transmission rights. In particular, we are concerned that auctioning physical transmission rights at prices that may exceed cost-based rates would allow market power to be exercised. Physical rights allow

⁵⁶See Order No. 2000 at 30,933 (stating that one of the reasons for establishing RTOs was "to remove opportunities for discriminatory transmission practices").

⁵⁷See supra note 11.

capacity to be withheld from the market. There is also less transparency here than there is in a market where transmission service is provided in tandem with an energy market.⁵⁸ Under the current proposal there exist incentives to adjust or manipulate schedules in order to profitably impact the availability of Recallable Transmission Rights in the market since the day-ahead schedules are not necessarily binding. Therefore, although we stated in the October 10 Order that we will allow Applicants' physical congestion model as a "Day One" approach, Applicants must further support their firm transmission rights auction proposal to demonstrate that the auction mechanism is transparent and not subject to manipulation (e.g., transmission customers do not have the ability to withhold FTRs).

N. Ancillary Services

1. Request for Clarification

51. Arizonans for Competition contends that the Tariff should be revised to make clear that local generation resource service can be self-provided by market participants. Arizonans for Competition maintains that the language in Appendix D (Ancillary Services) to the Tariff is not clear on this matter and asserts that the service can only be obtained from WestConnect by those scheduling coordinators that require the service because they cannot provide such service during load pocket conditions. Arizonans for Competition requests that the Commission require Applicants to clarify that local generation resource service may be self-supplied in order to submit a balanced schedule during load pocket conditions.

2. Commission's Response

52. Units outside of the load pocket during transmission constrained conditions will not be able to provide service. In such cases, transmission customers, must purchase energy from resources within the load pocket area. According to Section D.9.10 of Appendix D, when WestConnect projects load pocket (transmission constrained) conditions, generators with local resource obligations must offer all available unscheduled energy into the WestConnect auction for this ancillary service. If a

⁵⁸For example, there are not appropriate price signals (i.e., marginal cost of generation or redispatch cost) that will allow a transmission customer to determine the value of its bid.

transmission customer has scheduled a local generation resource-obligated generator to service load within a load pocket, its schedule may be balanced and therefore would not need local generation resource service. In addition, if a transmission customer has rights to generation that has available capacity in the load pocket, that transmission customer may use such capacity to satisfy its ancillary service needs.⁵⁹ Accordingly, we grant Arizonans for Competition's request for clarification and require Applicants to clarify that local generation resource ancillary service may be self-provided.

O. Operational Authority

1. Request for Rehearing and Clarification

53. Applicants request that the Commission confirm that their proposal to delegate certain operational authority to the Area Operation Centers (AOCs) of the PTOs satisfies Order No. 2000. In the alternative, they request that the Commission explain what additional information is required from them for the Commission to make a ruling on this issue. Applicants maintain that their proposal contains sufficient detail to permit the Commission to evaluate whether it conforms to the operational authority requirements of Order No. 2000. The WestConnect design allows WestConnect to have independence in asserting functional control over its facilities.⁶⁰ Applicants also seek clarification that the Commission did not intend to apply the WestConnect code of conduct, which is incorporated in the Tariff as Appendix R, to the AOCs.

54. In addition, Applicants ask that the Commission reverse its conclusion that the self-tracking provision is not consistent with Order No. 2000. The October 10 Order erred in requesting additional detail regarding the impact a self-tracking system will have on WestConnect's provision of transmission service and its operation of the energy markets it oversees. Applicants state that a self-tracking system will neither affect the ability of WestConnect to provide transmission service, nor WestConnect's operation of energy markets.⁶¹ According to Applicants, a self-tracking system is necessary to ensure full participation in the RTO, because it allows a transmission customer to self-supply its energy requirements and certain of its ancillary service requirements.

2. Commission's Response

⁵⁹This may be especially true if WestConnect does not select a generator as having local generation resource service obligations.

⁶⁰See Applicants Request for Rehearing at 14.

⁶¹See *id.* at 26.

55. We deny Applicants' request that their proposal to delegate operational authority to AOCs satisfies Order No. 2000. The delegation to AOCs of the responsibility for physical operation of the transmission grid (e.g., issuing dispatch instructions) needs to be limited so that WestConnect retains the sole operational authority over those facilities that are under its functional control. Accordingly, AOCs may only carry out dispatch instructions that are issued by WestConnect. The sharing of operational authority among WestConnect and AOCs could adversely affect reliability or provide market participants with an unfair competitive advantage. As we noted in the October 10 Order, Order No. 2000 stated that an RTO must have clear authority to direct all actions that affect the facilities under its control, including the decisions and actions taken at any satellite control centers.⁶²

56. We note that we have allowed satellite control structures (i.e., the use of AOCs) in other RTO proposals (for example, MISO).⁶³ However, in such cases, as in MISO, the AOCs acted under the direction of MISO; they were not delegated, as Applicants propose, operational authority over facilities. In addition, in MISO, there were mechanisms in place that created disincentives for noncompliance with MISO's directives, thereby ensuring sufficient operational authority in a satellite control center structure.⁶⁴ Applicants have not required any such mechanisms.⁶⁵

57. Accordingly, as we stated in the October 10 Order, allowing AOCs to physically operate the transmission grid is consistent with Order No. 2000 as long as WestConnect maintains operational authority over the satellite operations centers and there are incentives in place for such centers to follow WestConnect's directives.

58. We also clarify that the Commission, in the October 10 Order, did not make the code of conduct rules of the Tariff applicable to AOCs; our finding was based on Section C.1.4(g) of Appendix C to the WestConnect Tariff, which states:

⁶²See Order No. 2000 at 31,090-91.

⁶³See, e.g., Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 (MISO), order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC 61,372 (1998).

⁶⁴See MISO at 62,161 (establishing a system of penalties and fines for noncompliance with MISO's directives by satellite control centers).

⁶⁵Section C.3.5(d) of Appendix C to the WestConnect Tariff proposes that WestConnect may establish penalties for failure of AOCs to respond to dispatch instructions.

The AOC of each Participating TO may perform, on WestConnect's behalf, those functions described in this Appendix C. An AOC may also provide an automated dispatch service for SCs, through which the AOC will automatically pass Dispatch Instructions that WestConnect directs to an SC from WestConnect to the SC's Resources, provided that: . . . the AOC shall meet the Standards of Conduct requirements of the Federal Energy Regulatory Commission . . . and Appendix R, WestConnect Code of Conduct.

This clearly makes the AOCs and their employees subject to the WestConnect code of conduct. Accordingly, the Commission did not apply the code of conduct to AOCs; Applicants did.

59. With respect to the self-tracking system, we reject Applicants' request for rehearing. Applicants assert that the Commission erred in its decision that a self-tracking system will undermine WestConnect's ability to provide transmission service or operate the energy markets it oversees. Applicants misunderstand our finding. The additional information we requested is related to whether a self-tracking system may affect WestConnect's authority to provide these services. We did not state that a self-tracking system will undermine WestConnect's ability to provide transmission service or operate energy markets. In order to aid our understanding of Applicants' proposal regarding self-tracking, we encourage Applicants to provide additional explanation of their self-tracking proposal in the technical conferences established in the October 10 Order.⁶⁶

P. Transmission Adjustment Component of Rates

1. Request for Rehearing or Clarification

60. Applicants seek rehearing or clarification that the transmission adjustment component (TAC) may also apply to parties other than the Western Area Power Administration (Western) who choose to participate in WestConnect. According to Applicants, the October 20 Order appears to find that the TAC may only be used to compensate Western for its lost revenues. However, there may be other transmission-owning entities not currently participating in WestConnect that would benefit from this element of the WestConnect proposal.

2. Commission's Response

⁶⁶See October 10 Order at P 164.

61. The Commission grants Applicants' request for clarification that transmission-owning entities other than Western may receive TAC treatment. The TAC proposal is important to encourage the participation of transmission owning entities in WestConnect. However, we note that the TAC proposal in the Tariff (Appendix O, Schedule D), as written, only contemplates TAC calculations for Western. Accordingly, if additional transmission owners request TAC treatment, WestConnect must make a filing with the Commission, pursuant to section 205 of FPA, for acceptance of each request.

Q. Planning and Expansion

1. Request for Rehearing

62. Applicants' proposal provides any PTO whose transmission system must either be modified or expanded to support a proposed project identified in the WestConnect expansion plan with a right of first refusal for the construction and ownership of the project. The October 10 Order found that Applicants had not sufficiently explained their right of first refusal provision and directed Applicants to explain why such a proposal is necessary.⁶⁷ Applicants explain in their request for rehearing that the right of first refusal is critical for PTOs to maintain reliability, and that the provision permits participation by public power entities and Western in the WestConnect RTO without violating their statutory requirements. As an example, Applicants note that in order to meet Western's legal obligations, Western must retain ownership and the ultimate management and control of its transmission facilities. The right of first refusal would allow Western to perform the work on its own facilities, or to achieve a satisfactory alternative arrangement. This would avoid joint ownership and related financial issues, enabling Western to meet its statutory responsibilities.

63. Applicants also state that many of the facilities that will be under the control of WestConnect are jointly owned by private and public entities and that some of these entities are not located within the WestConnect region (e.g., the Los Angeles Department of Water and Power). They contend that any expansion of these jointly owned facilities requires, by the terms of their ownership contracts, that the joint owners construct and own any new upgrades to the line. In addition, Applicants maintain that the right of first refusal for upgrades and additions to facilities financed with tax-exempt bonds avoids

⁶⁷See October 10 Order at P 200.

issues related to bond covenant restrictions and risk of loss requirements in the new private use Internal Revenue Service regulations. For these reasons, Applicants request that the Commission grant rehearing and accept their right of first refusal provision.

64. UAMPS requests rehearing of the requirement that Applicants modify the WestConnect planning protocol to permit WestConnect to fund studies to evaluate third-party system expansion proposals that are not approved in its planning process and to bear the risk, as other parties must, of recovery if they proceed with system enhancements or expansions that are not approved through the WestConnect planning process. According to UAMPS, Applicants' proposal does not give WestConnect adequate control over the planning and expansion process because it fails to enable WestConnect to fund the development of third-party proposals or to enable transmission owners to retain the right to build or expand the system as they see fit without financial risk. UAMPS argues that Applicants' proposal also unnecessarily restricts the number of expansion project proposals that WestConnect would be able to consider if it does not fund third-party proposals.

2. Commission's Response

65. Applicants' arguments on rehearing on a right of first refusal are unpersuasive. Applicants make essentially two arguments. They assert that a right of first refusal is needed to ensure reliability. However, they offer no specificity in making this argument. In particular, they do not explain why grid expansions built and owned by others would be any less reliable than expansions built and owned by Applicants. While the reliability of the grid is of paramount importance, an unsupported allegation of reliability degradation is an insufficient basis to permit Applicants' right of first refusal proposal, particularly given the effect this provision may have in discouraging third parties from pursuing transmission expansions.

66. Applicants argue that the right of first refusal is necessary to preserve statutory requirements of public power desiring to participate in WestConnect. This argument, however, appears overly broad. At least some transmission expansions will be new transmission facilities and the construction and use of these new facilities would not appear to affect public power's ownership or tax status of its existing facilities. While we do not intend for parties to violate the statutory obligations of public power (although it is not yet clear why such a prohibition needs to be in a Commission tariff instead of determined through judicial fora), we believe it inappropriate to provide public power with a blanket right of first refusal on all transmission projects.

67. In the October 10 Order, we stated that WestConnect should have final authority over third-party expansion proposals not identified as part of its expansion plan.⁶⁸ We clarify that WestConnect has final authority over all proposals to expand or upgrade the facilities under the control of WestConnect. We also found in the October 10 Order that expansion projects that are not in the WestConnect transmission expansion plan may be constructed at the risk of the project developer. We clarify that this option must apply to third-party developers as well as PTOs.⁶⁹

68. We will not require Applicants to propose a mechanism for funding third-party studies. We believe it is more appropriate for UAMPS to propose such a mechanism to the SAC and to the Board in order to determine the viability of and the need for such a program. UAMPS has not provided evidence that there will be fewer third-party proposals without such a mechanism. With respect to UAMPS' request concerning facilities built by PTOs outside of the expansion plan, we find that cost recovery issues related to any such projects should be handled in individual rate cases filed by PTOs to establish their transmission revenue requirements.

The Commission orders:

Requests for rehearing and clarification are granted and denied, as discussed in the body of this order.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

⁶⁸See October 10 Order at P 200.

⁶⁹See *id.* However, as noted, all projects are subject to the review of WestConnect in order to eliminate, among other things, the duplication of facilities, and to encourage prudent construction decisions.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Arizona Public Service Company
El Paso Electric Company
Public Service Company of New Mexico
Tucson Electric Power Company

Docket No. RT02-1-003

WestConnect RTO, LLC

Docket No. EL02-09-001

(Issued December 20, 2002)

MASSEY, Commissioner, dissenting in part:

I support the decisions reached in this order except for its conclusion regarding the applicability of the SMD final rule. I am unwilling to conclude that the Commission should not revisit some of the decisions made in RTO orders if there are inconsistencies with the SMD final rule. I do not wish to tie the Commission's hands in developing regional electricity markets. The more complete reasoning for my view is articulated my dissent to underlying declaratory order.⁷⁰

For these reasons, I respectfully dissent in part from today's order.

William L. Massey
Commissioner

⁷⁰101 FERC at 61,138 to 61,139.

